

MAY 18 2006

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

NOT FOR PUBLICATION

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

MARINE TOPUSHYAN,

Petitioner,

v.

ALBERTO R. GONZALES, Attorney
General,

Respondent.

No. 04-73048

Agency No. A95-575-756

MEMORANDUM^{*}

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted May 15, 2006^{**}

Before: B. FLETCHER, TROTT and CALLAHAN, Circuit Judges.

Marine Topushyan, a native of the former Soviet Union and citizen of
Armenia, petitions for review of an order of the Board of Immigration Appeals

^{*} This disposition is not appropriate for publication and may not be
cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

^{**} The panel unanimously finds this case suitable for decision without
oral argument. *See* Fed. R. App. P. 34(a)(2).

(“BIA”) dismissing her appeal from an immigration judge’s (“IJ”) order denying her application for asylum. We have jurisdiction pursuant to 8 U.S.C. § 1252. We review the denial of asylum for substantial evidence, *see Mamouzian v. Ashcroft*, 390 F.3d 1129, 1133 (9th Cir. 2004), and we grant the petition for review and remand for further proceedings.

Topushyan testified that she was detained for four days, sexually assaulted, beaten until she lost consciousness during two separate encounters with government authorities and threatened on numerous occasions to cease her political activities and the agency deemed her testimony credible. Based on this testimony, a reasonable fact finder would be compelled to conclude that Topushyan suffered past persecution on account of her political opinion. *See Mamouzian*, 390 F.3d at 1134; *see also Shoafera v. INS*, 228 F.3d 1070, 1074-75 (9th Cir. 2000) (sexual assault may constitute past persecution when on account of a protected ground).

Once a petitioner demonstrates past persecution, she is entitled to a presumption of a well-founded fear of future persecution. *See Mamouzian*, 390 F.3d at 1135; 8 C.F.R. § 208.13(b)(1). The government may rebut that presumption by establishing changed country conditions. *See Mamouzian*, 390 F.3d at 1135. Here, neither the IJ nor the BIA reached the issue of changed

country conditions. Accordingly, we remand to the BIA to consider whether the government rebutted the presumption of a well-founded fear of persecution. *See INS v. Ventura*, 537 U.S. 12, 16 (2002) (per curiam).

PETITION FOR REVIEW GRANTED; REMANDED.